



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C-13-55-LSC

DATE: August 16, 2013

TO: State Survey Agency Directors
State Fire Authorities

FROM: Director
Survey and Certification Group

SUBJECT: August 13, 2013 Deadline - Installation of Automatic Sprinkler Systems in
Nursing Homes

Memorandum Summary

- **Automatic Sprinkler Required in All Nursing Homes:** All nursing homes must be fully sprinklered as of August 13, 2013 in order to participate in Medicare or Medicaid.
- **Five-Year Phase-In to August 13, 2013:** The sprinkler requirement was published on August 13, 2008 in a final rule entitled *Medicare and Medicaid Programs: Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems*. The regulation provided a five-year advance timeframe to achieve full sprinkler status by August 13, 2013.
- **Survey Process:** While CMS is not requiring any special surveys focused on the sprinkler requirement, a life-safety code (LSC) inspection is part of each facility's recertification survey. As these surveys occur during the year, facilities that are not fully sprinklered on or after August 13, 2013 will be cited for a deficiency.
- **No Extensions:** CMS does not have authority to allow extensions of the timeframe. CMS did issue a proposed rule on February 7, 2013 that would permit CMS to grant a time-limited extension of the due date for a facility that is building a replacement or undergoing major modification. At present, a final rule has not been promulgated. In reviewing the plans of correction for such facilities, we will take note of any facility that is in this circumstance. In the absence of a final rule, however, a deficiency will still be issued if the facility is not in compliance with the regulation in force at the time of the survey.
- **Questions & Answers:** Attached are answers to technical questions we have received.

A. Background

In this memorandum we describe the survey and enforcement process pursuant to the August 13, 2013 deadline for installation of automatic sprinkler systems in all nursing homes that participate in Medicare or Medicaid. On August 13, 2008 the Centers for Medicare & Medicaid Services (CMS) published a final rule requiring all long term care facilities to have automatic sprinkler systems installed throughout the building (73 FR 47075) no later than August 13, 2013.

CMS does not have authority to allow extensions of the August 13, 2013 deadline. On February 7, 2013, CMS issued a Notice of Proposed Rule-Making (NPRM) that would permit time-limited extensions of the due date for nursing homes that are building replacement facilities or undergoing major modifications to unsprinklered living areas. The NPRM may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-07/pdf/2013-02421.pdf>. At present, a final rule has not been promulgated. We will take note of any facility that is in this circumstance as we review plans of correction. In the absence of a final rule, however, a deficiency must be issued if the facility is not in compliance with the regulation in force at the time of the survey.

Based on the most recent surveys and data entered into the CMS survey information system (ASPEN) as of June 2013, we estimate that approximately 1281 facilities nationwide are not fully sprinklered, with approximately 1142 partially sprinklered (or unknown), and about 139 unsprinklered. Attachment One lists the number of these facilities by State.

B. Survey and Enforcement Process On and After August 13, 2013

LSC surveys will continue to occur as part of a normally-scheduled annual survey, or as part of a complaint visit in which LSC deficiencies are noted or referred. On or after the August 13, 2013 deadline, LSC surveys finding a facility without a complete automatic sprinkler system installed in accordance with *NFPA 101, LSC, 2000 Edition* and *NFPA 13, Installation of Sprinkler Systems, 1999 edition* will be cited on the CMS Form 2567 at deficiency tag K056 as not in compliance with CMS requirements at 42 CFR 483.70(a)(8).

However, States should seek to arrange survey scheduling and survey focus such that facilities that have an open enforcement cycle, where the cycle began prior to August 13, 2013, have that prior enforcement cycle completed before evaluating compliance with the new sprinkler requirement that took effect August 13, 2013, if closure of such prior enforcement cycle can be accomplished in a timely manner. A facility without a complete system that is in an ongoing enforcement cycle whose beginning date is prior to August 13, 2013 will be cited in the open cycle if LSC is a required part of the deficiencies being examined in the open cycle.

Facilities that are cited for not meeting the sprinkler requirement will be required to submit a plan of correction (POC) to correct the deficiency.

In order to promote the most rapid improvement in fire protection, CMS will generally not impose a civil monetary penalty (CMP) for a facility that is newly subject to the requirement to have an automatic sprinkler system installed throughout the building if the plan of correction ensures, by means of appropriate and timely investment, contracts in place, and completed plans for installation, that full sprinkler status will be achieved within three months of the completed survey. However, this does not preclude CMPs from being imposed immediately where the noncompliance is serious, particularly if at the time of the survey the necessary plans have not been completed. CMPs may also be imposed for other deficiencies. Further, the Social Security Act requires that a facility that is not in substantial compliance with CMS requirements within three months after the date the facility was found to be out of compliance (see section 1819(h)(2)(D)) will be subject to a denial of payment of new admissions (DPNA), and termination from Medicare participation at the end of six months.

C. Scope and Severity of Deficiency Citations

Failure to meet the requirement for a complete automatic sprinkler system (the new regulatory requirement) must be cited using deficiency tag K056. K056 may also be cited along with any other tag or tags.

Sprinkler deficiencies will usually be cited at the “potential for harm” scope and severity (S/S) level of D, E, or F, at a minimum. For example, the absence of a sprinkler system would always be cited at the F level or higher. The S/S “in compliance” levels A, B or C are not appropriate, since the failure to have a complete automatic sprinkler system in place as of August 13, 2013 constitutes noncompliance. Citation at the “harm” level of G, H or I is rare, as actual harm is usually not manifest unless there has been a recent fire or other sprinkler issue causing harm. Citation at the “immediate jeopardy” level of J, K or L, which allows for potential jeopardy and places the facility at risk of termination within 23 days, is also rare, but possible if there are grave circumstances in place. The “potential harm” level of D, E or F is therefore usually the appropriate scope and severity level at which to cite K056 and all other sprinkler deficiencies. States should select the Scope of D, E, or F based on how many facility residents face potential harm as a result of the deficiency.

When an LSC citation is made, the facility will be placed on the normal enforcement track. As indicated previously, a CMP will generally not be imposed if contracts are in place, plans are completed, and the plan of correction ensures that full sprinkler status will be achieved within three months of the completed survey. Denial of payment for new admissions going into effect at three months if compliance has not been achieved by then, and termination from the program at six months, if noncompliance continues. The CMS Regional Office may issue other remedies and earlier enforcement effective dates based on its judgment regarding all the circumstances at the facility (including non-LSC factors). The absence of a clear commitment to, and reasonable timeframe for, sprinklering the facility will likely be cause for strong enforcement action, including CMPs.

D. Examples and Enforcement Implications

1. Fully Sprinklered Facilities with Minor Problems with LSC Compliance

This group includes facilities that have complete, functioning, automatic sprinkler systems, whether or not they were required previously under the LSC, but the systems are found to have minor problems. For example, although all areas in a facility may have sprinklers, there may be improper coverage by one or more sprinklers. One or more sprinklers may be obstructed by objects installed or stacked nearby. Or some sprinklers may have been installed too close to each other. These deficiencies will be cited at S/S D, E, or F at the appropriate LSC tag, and should be corrected before the end of the third month. However, time-limited waivers of less than six months may be possible in appropriate circumstances, because these are findings that come under the aegis of the LSC governing the manner of installation. K056 would not need to be cited. If an LSC waiver provides more time for the facility, but the deficiency or deficiencies are not corrected by the end of the allowed period of the waiver, then appropriate remedies will go into effect.

2. Fully Sprinklered Facilities with Major Problems

If the judgment of the survey agency and the CMS RO is that a building with what appears to be a complete sprinkler system has many and/or significant problems with the system, that building should be considered partially sprinklered and cited under K056 at S/S D, E, or F, depending on the extent of the potential for harm. No waiver of K056 would be available. For example, a facility may be missing multiple sprinkler heads in rooms that were subdivided, such that only some of the subdivided rooms now have sprinkler heads. Or, a facility may be missing sprinklers in outside overhangs¹ or loading dock; or required sprinkler heads are missing in the attic area. These deficiencies will be cited at S/S D, E, or F at the appropriate LSC tag. If compliance is not achieved by the end of the third and/or the sixth month of the enforcement cycle, appropriate statutory remedies will go into effect.

3. Partially Sprinklered Facilities

The facility has a partial sprinkler system. For example, wings or additions may have been constructed and sprinklered, but older parts of the building are not sprinklered. Or certain rooms, hallways or other major portions of the building may not be not sprinklered. Or sprinklers may be installed only in hazardous areas. These situations would be cited under K056 at S/S D, E, or F, depending on the potential for harm. No waiver of K056 is available. If compliance is not achieved by the end of the third and/or the sixth month of the enforcement cycle, appropriate remedies will go into effect.

4. No Sprinkler System

If there is no sprinkler system installed in the facility, then K056 must be cited at S/S level F, since the potential for harm is widespread. No waiver of K056 is available. Various sanctions may apply. If compliance is not achieved by the end of the third of the enforcement cycle then a denial of payment for new admissions must be applied, and at the end of the sixth month of the enforcement cycle, termination from Medicare must occur.

E. Canopies and Overhangs

At Section 5-13.8.1, NFPA 13 requires that sprinklers shall be installed under exterior roofs or canopies exceeding 4 feet in width with an exception for those with noncombustible or limited combustible construction. CMS previously addressed the issue of canopies and overhangs on July 13, 2007 via S&C Memo 07-29. In that memo we stated that “Existing waivers may be continued until CMS regulations require that the facility become fully sprinklered.” The August 13, 2013 effective date of 42 CFR 483.70(a)(8) means that waivers previously granted for unsprinklered overhangs or canopies must be ended. S&C Memo 07-29 also described the manner in which the FSES applied to the issue of sprinklers. The Memo stated: “Facilities may only use the FSES to comply with these requirements until CMS regulations require that the facility become fully sprinklered. We will engage with any facility that was granted a waiver, but has not yet installed sprinklers in overhangs or canopies (and which therefore fall into the

¹ See section F for more information regarding overhangs and canopies.

“partially sprinklered category” described in D.3 above), to schedule the waiver phase-out as part of their plan of correction.

Note that sprinklers can be omitted if the canopy construction assembly is comprised totally of non-combustible or limited combustible materials. No storage is permitted underneath. NFPA 13, 1999 Edition, does not permit the omission of sprinklers under exterior roofs or canopies where the construction uses fire retardant-treated wood (FRTW) or cloth. Furthermore, FRTW cannot be assumed to be equivalent to noncombustible or limited combustible material. Cloth awnings that are not part the roof or building structure do not need to be sprinklered.

F. Facilities that are Building Replacements or Major Modifications

We appreciate that some facilities have delayed the installation of sprinklers in an older nursing home that is likely soon to be replaced by a new facility, or is undergoing a major modification (see S&C-04-15). While we currently lack authority to acknowledge the unique circumstances involved with such facilities, we request that you maintain close communication with the State SA and CMS. Certain information will be of value to us as we continue to work on this matter. Examples of the type of information that would be useful can be found in Attachment Two.

G. Questions & Answers

In Attachment 3 (Question and Answer document) we respond to certain questions CMS has received. We anticipate updating this information as needed.

H. Contacts

Please contact your CMS Regional Office if you have further questions regarding this matter. The Central Office contact for policy communications is James Merrill at James.Merrill@cms.hhs.gov.

I. Effective Date

The information contained in this memorandum is current policy and is in effect for all nursing homes participating in the Medicare and Medicaid programs. The State Agency should disseminate this information within 14 days of the date of this memorandum.

J. Training

This policy and procedure clarification should be shared with all survey and certification staff, fire authorities, surveyors, their managers, and State and RO training coordinators.

/s/

Thomas E. Hamilton

Attachments:

1. Counts of Nursing Homes Without Full Sprinkler Systems
2. Useful Information About Facilities Planning Replacements or Major Modifications
3. Nursing Home Sprinkler Requirement Q&A

cc: Survey and Certification Regional Office Management

Attachment One - Nursing Homes Without Full Sprinkler Systems, by State

State	Not Sprinklered	Partially Sprinklered	Unknown	Total
AR	5	29		34
AZ		35		35
CA	6	29		35
CO		5		5
CT	2	13		15
DC	1	9		10
DE		1		1
FL	3	15		18
GA	1	5		6
HI	1	4		5
IA	5	14		19
IL	19	195		214
IN	1	2	15	18
KS	3	9		12
KY	1	3		4
LA	6	14		20
MA		13		13
MD	2	16		18
ME		3		3
MI		72		72
MN	1	12		13
MO	5	22		27
MS	10	26		36
MT		3		3
NC	13	59		72
ND	4	4		8
NE	7	3		10
NH	1	2		3
NJ	1	9		10
NM		2		2
NV		5		5
NY	1	212		213
OH		13		13
OK		17		17
OR		3		3
PA	10	108		118
PR	6			6
RI	2	7		9
SC		7		7
SD	3	42		45
TN		19		19
TX	17	4		21
UT			4	4
VA		4		4
WA		1		1
WI	2	48		50
WV			2	2
WY		3		3
Total	139	1121	21	1281

Caveats

These data are based on the most recent survey of each facility, according to data entered into the CMS survey information system as of June 2013.

However, the data may be out of date. For example, a facility may have been unsprinklered at the time of its survey in September 2012, had sprinklers installed after September, but not had a subsequent recertification survey as of June 2013. As a result, our database will not have recorded the fact that the facility achieved full sprinkler status.

There may also be facilities that are not fully sprinklered but do not appear in these numbers. This may occur if the facility was not required to be fully sprinklered prior to August 13, 2013.

Consequently, the most recent recertification survey may not have fully examined the adequacy of sprinkler coverage because the survey would not examine a requirement that did not apply to the facility at the time of the survey.

Attachment Two

Useful Information About Planned Replacement or Major Modification Situations

- 1) **Organization Information:** The name, address, CCN, owner, and other data regarding the nursing home that is planning to build a replacement facility soon, or make major modifications to unsprinklered areas of the nursing home in addition to the installation of a complete sprinkler system.

- 2) **Type of Situation:** Is the plan for a (a) Replacement Facility or (b) Major Modification?
 - a. ***Replacement Facilities:*** What is the nursing home planning by way of a replacement facility? What is the anticipated timetable for gaining necessary local construction approvals, beginning construction, and completing construction?

 - b. ***Major Modifications:*** In the case of the major modification of unsprinklered areas, what kinds of modifications are planned, which units are affected, what is the square footage involved, and what is the anticipated timetable for beginning and ending construction?

- 3) **Current Status:** What is the current status of the project? For example, what plans have been completed (e.g., board has approved plans, architectural plans have been completed, bid estimates received, etc.), what approvals have been finalized (e.g., local building permits, financial commitments).

- 4) **Contact Information:** The postal, phone, and electronic information for a contact person with whom CMs or the State Survey Agency might communicate about the project.

Attachment Three - Automatic Sprinkler Requirement Q&A for Nursing Homes

Below are responses to various questions the Centers for Medicare & Medicaid Services (CMS) received regarding application of the CMS administrative rule that requires automatic sprinklers in all Medicare- or Medicaid-participating nursing homes by August 13, 2013.

Q1) Out Buildings: *Are out buildings without access by nursing home residents required to be sprinklered, such as a laundry facility, in order for the facility to be considered fully sprinklered?*

A1) No, out buildings without access by nursing home residents are not required to be sprinklered for a facility to be considered fully sprinklered.

Q2) Changes in the 2011 NFPA 25: *Is CMS planning to recognize the three (3) recent changes to the 2011 edition of the National Fire Protection Association (NFPA) 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 1998 edition, concerning anti-freeze solutions in sprinkler systems?*

A2) CMS is reviewing the recent changes to NFPA 25 but at this time has not adopted them. We are mindful of the current fact that the NFPA 25 changes could entail costs to providers since there is no current substitute for the anti-freeze solutions used. Providers would have to change the type of sprinkler system, in areas such as attics, from a wet system to a dry system. Research and development is under way to come up with usable anti-freeze solutions but they are not expected on the market for several years.

Q3) Walk-in Coolers and Freezers: *Are walk-in type coolers and freezers required to be sprinklered for a facility to be considered fully sprinklered?*

A3) Yes, walk in coolers and freezers are required to be sprinklered by section 5.1 and formal interpretation 78-6. NFPA 13, 1999 Edition, Section 5-1.1(1) specifies that a complete sprinkler system must have 'Sprinklers installed throughout the premises'. However, as indicated in Answer #1, out buildings without access by nursing home residents are not required to be sprinklered for a facility to be considered fully sprinklered.

Q4) Exceptions: *Are exceptions to the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition recognized in determining if a facility is fully sprinklered?*

A4) Yes, exceptions to requirements of NFPA 13 Standard for the Installation of Sprinkler Systems, 1999 edition are recognized when determining if a facility is fully sprinklered. Exception No. 1 states 'For locations permitting omission of sprinklers, see 5-13.1, 5-13.2 and 5-13.9.' These three sections contain the only areas where omissions are permitted by the code through exception. If there is no specific exception for omitting a sprinkler in a specific area then that area is required to be sprinkler protected for the building to be considered fully sprinklered.

Q5) Alternatives in Elevator Machine Rooms: *Are alternative sprinkler systems allowed in protecting elevator machine rooms rather than the use of a water based extinguishing system?*

A5) Elevator machine rooms are required to be protected. Note, however, that Section 1-2 of NFPA 13, Installation of Sprinkler Systems, 1999 edition recognizes alternative arrangements or systems. These systems could be, for example, a dry-chemical system or a gas extinguishing system that would not damage elevator equipment when discharging.

Q6) Free-Standing Wardrobes and Closets: *Are free-standing wardrobes/closets required to be sprinklered internally?*

A6) Sprinklers are required in all closets in a nursing home regardless of the size of the closets. However, free-standing wardrobes/closets are not required to be sprinklered internally, as they are considered to be furniture and could be protected by sprinkler heads outside of the pieces of furniture. This would include free standing wardrobes/closets that are considered to be furniture and are setting in a recessed space.

Q7) Canopies and Awnings: *Are sprinklers permitted to be omitted where a canopy or awning is constructed of materials that are noncombustible, limited combustible, or fire retardant materials such as-treated wood or cloth materials.*

A7) Yes, sprinklers can be omitted if the canopy construction assembly is comprised totally of non-combustible or limited combustible materials. No storage is permitted underneath. NFPA 13, 1999 Edition, does not permit the omission of sprinklers under exterior roofs or canopies where the construction uses fire retardant-treated wood (FRTW) or cloth. Furthermore, FRTW cannot be assumed to be equivalent to noncombustible or limited combustible material. Cloth awnings that are not part the roof or building structure do not need to be sprinklered.

Q8) Lobbies and Connectors: *A certified portion of building is fully sprinklered, but there is a lobby-type area connecting the building to an uncertified facility. In the lobby is the elevator to the lower level of the certified building which contains the physical therapy department. The uncertified facility and the lobby connecting the two are not sprinklered. Resident access/use is only walking through to elevator (and I would assume the elevator shaft).*

A8) The shaft may have to have sprinkler heads installed depending on the situation. Refer to section 5-13.6 Elevator Hoistways and Machine Rooms, National Fire Protection Association (NFPA), Standard for the Installation of Sprinkler Systems, NFPA 13, 1999 edition for more specific information.

Q9) Rarely-Visited, Separated Non-Nursing Home Units: *The certified portion of building is fully sprinklered with 2-hour separation from uncertified building that provides assisted living apartments. Corridor is sprinklered, but assisted living apartments are not. A resident goes to assisted living on rare occasions. One instance is to visit a resident on the AL side (very rare because usually the other way around). Another instance is, as a part of rehab to home, resident taken to AL to "practice" living skills.*

A9.1) Since residents do not live or sleep in the apartments or rooms of the uncertified building, they do not need to be sprinklered to meet Federal requirements.

Q10) Other separated Non-Nursing Home Units: *The certified portion of building is fully sprinklered. Beauty shop is located in uncertified building. Beauty shop area is sprinklered.*

Corridor from certified building to beauty shop is sprinklered. But resident apartments/rooms along the corridor (of uncertified building) are not sprinklered.

A10) Since residents do not live or sleep in the apartments or rooms of the uncertified building, they generally do not need to be sprinklered to meet Federal requirements. However, if regular patient use of that area is expected, then the LSC health care facility requirements may apply to the adjacent area. Please contact your appropriate life-safety code contact, because the specific use and configuration of the area may make a difference as to what is required.

Q11) Separate Administrative Units: *The nursing home building is fully sprinklered, but there is a mobile home trailer on the campus that houses offices for the business manager and others. Residents do not go to trailer; staff comes to the building to meet with residents/families. Supposedly no essential records, etc. are located in the trailer. The trailer is not sprinklered.*

A11.) Since residents do not go to the mobile home, the mobile home does not have to be sprinklered to meet Federal requirements.